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THE FEDERAL REAL ID ACT OF 2005: IMPLICATIONS, OPTIONS AND CHALLENGES FOR NEW MEXICO

SUMMARY

The REAL ID Act of 2005 establishes certain standards, procedures and requirements for issuing driver's licenses and personal identification cards that states must meet by May 2008 to be accepted as identification by the federal government. If New Mexico does not comply with the act, New Mexicans will be prohibited from boarding airplanes or accessing federal buildings without federal government-approved identification. Compliance requires changes to state law and will undoubtedly carry significant fiscal impacts and administrative burdens. This bulletin summarizes the primary requirements of the REAL ID Act, reviews the critical concerns and substantial costs associated with the act's implementation and presents policy options for the New Mexico Legislature.

THE REAL ID ACT: A CONTROVERSIAL BURDEN ON STATES

On May 11, 2005, the president signed into law the "REAL ID Act of 2005" that Congress passed as part of the "Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief Act". The REAL ID Act imposes certain uniform standards and requirements for driver's licenses and personal identification cards. Unless New Mexico complies with the act, state driver's licenses or personal identification cards will not be accepted by the federal government as valid forms of identification for "any official purpose". The act defines "official purpose" as "accessing Federal facilities, boarding federally regulated commercial aircraft, entering nuclear power plants, and any other purposes that the Secretary [of homeland security] shall determine".

Across the nation, states are grappling with the impacts associated with the REAL ID Act. Pursuant to the act, a state must implement minimum design, security and data storage

standards and processes for issuing driver's licenses and personal identification cards. The law additionally requires that states issue the licenses and cards only to United States citizens, nationals or persons who meet one of the federal categories of lawful immigrant status. States must also independently verify all documentation presented by a person to prove that person's identity. These requirements, among many others, have led a number of states and national organizations to argue that it is unreasonable to meet the REAL ID Act requirements by the May 2008 deadline.

Further complicating the issue for states, the federal government has yet to provide regulatory guidance or essential funding for implementing the act. The REAL ID Act provides the U.S. Department of Homeland Security (DHS) with the authority to issue all regulations and set standards for state compliance as well as the responsibility to determine whether a state is meeting the requirements of the act. However, DHS is not expected to promulgate those regulations until early 2007. Congress also authorized DHS to make grants to assist states in implementing the act. In fiscal year 2006, DHS allocated to two states \$6 million of the \$40 million that the federal government appropriated for state implementation. As of the date of this publication, the federal government has not appropriated money for fiscal year 2007 to help states shoulder the costs.

STATE IMPLEMENTATION OF THE REAL ID ACT: COSTS AND CRITICAL CONCERNS

Implementation of the REAL ID Act is expected to cost states more than \$11 billion and have significant impacts on the administrative practices of state motor vehicle agencies. Seventy-one percent of the estimated cost, \$8.48 billion, consists of the time and resources needed to re-enroll driver's license and identification card holders. Indications from federal officials suggest

that states will have five years to complete re-enrollment.

The following sections briefly summarize the principal provisions of the REAL ID Act, the estimated costs of implementation and critical concerns for states.

Document Design and Issuance Standards

At a minimum, the REAL ID Act requires that a driver's license or personal identification card issued by a state bears the person's full legal name, date of birth, gender, driver's license or identification card number, digital photograph, address of principal residence and certain physical security features to prevent tampering, counterfeiting or duplication. The license or card is required to have a common, machine-readable technology.

The REAL ID Act also mandates that states require presentation and verification of certain documents before issuing a driver's license or personal identification card. A person must present a photo or non-photo identity document that includes the person's full legal name and date of birth; proof of the person's social security number; and documentation showing the person's name and address of principal residence. Furthermore, states must take a photo of all persons who *apply* for a driver's license or personal identification card, regardless of whether a license or card is issued.

The design and issuance standards of the REAL ID Act are causes for concern for states. For example, many states allow address changes without requiring issuance of new driver's licenses. Twenty-five states, including New Mexico, also do not print addresses on the licenses of certain protected classes, such as law enforcement officers. Cost estimates for implementing the residence, name and photo requirements reach almost \$700 million over five years for states. Depending on DHS regulations, uniform technology for cards' physical security features could cost states \$1.1 billion over five years.

Immigration Requirements

Only U.S. citizens, nationals and non-citizens who can present evidence of lawful presence in the United States may be issued a driver's license or personal identification card pursuant to the REAL ID Act. Before issuing the license or card, the act

requires presentation and verification of documentary evidence that the person is a citizen or meets one of the eight categories of lawful immigrant status under federal law. For certain lawful immigrant status categories, the REAL ID Act only authorizes the issuance of temporary driver's licenses or identification cards.

Eleven states, including New Mexico, do not require lawful presence as a condition for acquiring a driver's license or identification card and will have to change their license and card issuance criteria to comply with the REAL ID Act. Moreover, all states will be faced with reviewing and verifying immigration documents. An intensive verification process increases the cost and number of transactions for motor vehicle agencies. The lawful presence requirement of the act is estimated to cost states \$95 million over five years.

Verification of Source Documents

The REAL ID Act requires states to independently verify with the issuing agency the validity, issuance and completeness of each document a person presents in the application process for a license or card. States must contact issuers of birth certificates and verify their validity, confirm a person's social security number with the Social Security Administration, verify the person's legal presence status with the secretary of homeland security and verify that a person is not already licensed in another state. Verification of source documents is dependent on states integrating their systems with five national identity verification systems. Each of the five systems are intended to verify separate types of identity documents, including birth records of U.S. citizens born overseas, social security numbers and immigration documents. The REAL ID Act prohibits states from accepting any foreign document other than a passport for identity verification purposes.

Few states independently verify the authenticity and validity of each document presented to prove a person's identity. Most states verify a person's social security number through a national identity verification system; however, the majority of the verification systems necessary for REAL ID Act purposes are not fully developed and available for states. Furthermore, verification of birth certificates may be difficult and costly. The United States Secret Service identified more than

16,000 entities that produce birth certificates in the United States. An added concern is the limitation on accepting foreign documents for identification. Currently, there is no reliable way for state motor vehicle agencies to verify the accuracy of foreign passports through any of the five national identity verification systems. The new verification processes required by the REAL ID Act are estimated to cost states \$1.42 billion over five years. Much of that cost estimate includes investments by states in upgrading and reprogramming their systems and databases for verification purposes.

Security Standards and Data Storage and Sharing Requirements

The final principal requirements of the REAL ID Act relate to implementation of a range of security standards and storage of source documents. The act requires that states establish fraudulent-document recognition training programs for employees who issue driver's licenses and personal identification cards. Moreover, states must subject persons who are authorized to manufacture or produce the licenses or cards to background checks. Where the licenses and cards are produced or the source documents are stored must also meet certain physical security requirements. With regard to data retention and storage, states are required to employ technology that captures digital images of identity source documents. States must either store paper copies of the source documents for seven years or electronic images of the documents for 10 years. Electronic access to a state's motor vehicle agency database must be accessible by other states. States must store and share applicants' verification information with other states for law enforcement purposes.

While 41 states, including New Mexico, have fraudulent-document recognition training programs, there is concern that DHS may not certify those programs as compliant with the REAL ID Act. Costs to states are also increased by subjecting employees of vendors and suppliers of licenses and cards to background checks. Additionally, the background checks may not mesh with state personnel laws and could affect the terms and conditions of employment of current state motor vehicle agency employees. The records retention and data sharing requirements of the REAL ID Act

have also raised some privacy concerns. The financial burden for states for training and background checks is estimated at \$41 million over five years. The cost estimates for the REAL ID Act record retention requirements and changes to motor vehicle agency records systems exceed \$200 million for states over five years.

OPTIONS AND CHALLENGES FOR NEW MEXICO

With the May 2008 deadline approaching, the New Mexico Legislature faces few options with regard to implementation of the REAL ID Act. The following sections review those options and their major challenges, including current cost estimates and any needed changes to state law.

1. Comply with the REAL ID Act

The legislature may choose to implement the requirements of the REAL ID Act. This option requires changes to state law and the New Mexico Motor Vehicle Division's (MVD's) internal systems and processes. Due to the current lack of federal funding assistance, implementation also demands substantial financial investment from the legislature.

According to the MVD, the total estimated cost for REAL ID Act implementation in New Mexico is \$13,053,000 in fiscal year 2008 and \$6,044,000 annually thereafter. The majority of costs derive from the act's document issuance, design and verification requirements. To meet the minimum document requirements, MVD must upgrade or purchase a new internal system that ensures driver's licenses and personal identification cards will be REAL ID compliant. Card security features, such as the use of polycarbonate, that fulfill the REAL ID Act requirements may push costs considerably higher. MVD estimates the minimum document requirements will cost \$5,547,000 in fiscal year 2008 and \$1,950,000 annually thereafter.

Verification of source documents constitutes another major challenge that carries significant fiscal impacts. Although MVD currently verifies a person's name, date of birth and social security number with the Social Security Administration through a national identity verification system, MVD's ability to electronically verify the validity of certain documents is limited. For example, only

approximately 40 percent of New Mexico's birth records are available for electronic verification. MVD also cannot currently verify in real time an applicant's lawful presence and there would be an overnight time delay before MVD can issue a license to a foreign national. Lastly, MVD needs to build an all-driver database capable of exchanging driver's license information among states. MVD estimates the additional requirements for verification of source documents will cost \$3,072,000 in fiscal year 2008 and \$999,000 annually thereafter.

One of the primary amendments to state law needed for REAL ID Act compliance is a change to New Mexico's lawful presence requirements. New Mexico law currently allows for driver's licenses to be issued to residents regardless of immigration status. Additionally, the MVD is authorized to accept foreign documents other than a passport to prove a foreign national's identity. To comply with the REAL ID Act, the legislature may choose to eliminate the eligibility of foreign nationals to obtain driver's licenses under state law. Another alternative, according to the MVD, is the creation by the legislature of a separate document, such as a "driving permit" that would allow foreign nationals to drive on New Mexico's roads and that would not be recognized for purposes of the REAL ID Act. As required by the act, a driver's license that does not conform to the federal requirements must use a unique design or color indicator to alert federal agencies or officials that the license is noncompliant. MVD estimates that creating a driver's permit to fulfill the REAL ID Act's legal-presence requirement will cost \$1,853,000 in fiscal year 2008 and \$262,000 annually thereafter.

Finally, legislative approval is also needed in order for MVD to subject all current and new employees to background checks. MVD expects that the security clearance requirements of the REAL ID Act will have a significant impact on its own personnel procedures as well as those of the State Personnel Office.

2. Reject Compliance with the REAL ID Act

As a second option, the legislature may choose to reject compliance with the REAL ID Act. The legislature may demand that Congress repeal the REAL ID Act altogether or condition its rejection on certain actions by the federal government. For example, New Mexico may

refuse to comply with the act unless federal funds are appropriated to assist the state with compliance. Furthermore, the legislature may insist the federal government extend the compliance deadline or provide some flexibility in DHS regulations for existing state practices. A task force could be created in the interim to further study the impacts of the REAL ID Act, and legislators could lobby New Mexico's congressional delegation to support action at the federal level.

Legislatures in Kentucky, New Hampshire and Washington considered resolutions and bills in 2006 rejecting the requirements of the REAL ID Act. However, rejection of the act may carry significant consequences. New Mexicans may not be able to board airplanes or enter federal facilities without a passport or other federal identification if New Mexico elects not to comply. Thus, the legislature may consider funding outreach efforts to educate the public on the effects of noncompliance with the REAL ID Act.

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